THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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W.P.NO.19883 OF 1993

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O R D E R

Heard Sri N.Ramohan Rao, learned counsel for the petitioner and Mrs.V.Preethi Reddy Standing Counsel for Visakhapatnam Urban Development Authority.

2. This writ petition is filed for a writ of certiorari, calling for the records relating to and connected with the proceedings P.No.66/12MIG/MVP/A4 dated 17.09.1993 as well as proceedings P.No.66/12MIG/MVP/A4 dated 2-10-1993 of the respondent and quash or set aside the same, holding them as arbitrary and consequently refrain the respondents from interfering with the possession and enjoyment of 289 Sq. yards of site forming as plot No.66, Sector 12 of Muvvalavanipalem layout, Visakhapatnam belonging to the writ petition.

3. In the affidavit filed in support of the writ petition it is state that the petitioner was an employee of Coltex Oil Refinery India Limited, Visakhapatnam, which was later taken by the Government of India and renamed as M/s Hindustan Petrolium Corporation Limited and was residing in a private accommodation as a lessee and that he was having four sons and a daughter. While so, during the year 1979, the Visakhapatnam Urban Development Authority (for short 'VUDA') has invited applications from the intending general public for purchasing developed plots at Muvvalavanipalem/Madhava Dharma localities and pursuant to the same, the petitioner made application on 1.5.1979 by paying a sum of Rs.500/- toward site deposit. The VUDA through its resolutions dated 6.6.1980 decided to offer a plot in the proposed lay-out at a tentative cost of Rs.45/- per sq. yard and the petitioner was called upon to express his willingness and he was also called upon to furnish relevant certificates and accordingly the petitioner expressed his willingness and ultimately, VUDA informed the petitioner that plot NO.66 in Sector 12 of Muvvalavanipalem layout is allotted to him subject payment of full cost of

Rs.15,606/- at a tentative rate of Rs.54/- per sq. yard and petitioner paid an amount of Rs.15,106/- by way of demand draft and obtained receipt and the petitioner was also asked to pay certain amounts and a registered sale deed was executed by VUDSA in favour of the petitioner on 27.2.1986 and possession of the plot was delivered to the petitioner. It is stated that the UVDA registered another sale deed bearing registration No.5451 dated 2.7.1986 in favour of Sri Appikonda Krishna Rao conveying MIG I, 66/12, indicating plot No.66 in sector 12 of Muvvalavanipalem Colony and that the petitioner does not know who the said individual was and that he recently came to know about it when he interacted with the officials of VUDA. During the course of employment with M/s Hindustan Petrolium Corporation Limited, the petitioner was transferred and posted in September, 1986 at Bombay and while he was away, as several people approached for allotment of vacant sites, VUDA undertaken steps to cancel the allotments made in favour of the petitioner for plot no.66 on technical grounds stating that the petitioner has executed an affidavit on 29.12.1980 setting out that he does not own or possess any land or house within the municipal corporation limits, but it has come to the notice of VUDA authorities that he acquired a small house bearing No.31-30-25A in Daba Gardens area of Visakhapatnam Municipal Corporation. Thereupon, the respondent – VUDA issued notice on 3.8.1989 calling upon the petitioner why the allotment made in his favour should not be cancelled as he own a house in Daba Gardens area. As the petitioner was in Bombay, his son Srinivasa Rao, filed reply on his behalf on 10.8.1989 stating that at the time of making application in the year 1979, neither the petitioner, nor any other member of the family own any immovable property either vacant land or property or a house at Visakhapatnam and that purchase of the house at Daba Gardens was subsequent to the making of the application for allotment of plot. In the explanation it is also stated that theirs is an undivided joint family and the petitioner was acting as Kartha. VUDA appears to have obtained information from Visakhapatnam Municipal Corporation stating that building bearing door No.31-30-34 under assessment No.16929 pertain to the petitioner and after receipt of the information, show cause notice was issued on 2.6.1990 asking why the allotment of plot No.66 in sector 12 of Muvvalavanipalem colony should not be cancelled for violation of the allotment conditions. The petitioner replied to this notice from Bombay stating that he purchased the said house subsequent to the application seeking allotment of a plot in Muvvalavanipalem colony and that it is a joint family venture. The petitioner had also made his intention clear to VUDA that after

retirement from service he intend to construct a house in the allotted plot and settle down therein. It is stated that though VUDA received communication from the petitioner from Bombay, they again sent two communications on 23.9.1991 and 22.11.1991 to his house at Daba Gardens. As the petitioner was away in Bombay, the request made by the VUDA for perusal of the original sale deed could not be complied with. Consequently, through proceedings dated 17.9.1993, VUDA made cancellation of allotment of plot No.66 in Sector 12, Muvvalvanipalem colony on the ground that there is no truth in the assertion of the petitioner that he purchased the house at Daba Gardens subsequent to the allotment of plot No.66/12 and, therefore, it was deemed that the petitioner was having the house even by the time he applied for allotment of the site and thus violated the allotment rules. The VUDA also forfeited the amounts and by communication dated 2.10.1993, the petitioner was informed that a unilateral cancellation deed for plot no.66 was executed vide document No.2476/93 on 25.09.1993 with the Joint Sub-Registrar of Visakhapatnam. In these circumstances, the case of the petitioner is that by the date of calling for applications for allotment of house sites on 1.5.1979 or as on 6.6.1980 ie., the date on which the VUDA passed resolution allotting the plot, which was communicated on 16.6.1980 or at least by the date of conclusion of allotment of plot on 31.7.1980 he does own any house or land within the Municipal Corporation Limits of Visakhapatnam and the sale deed was executed in his favour by his vendor on 18.8.1980 with respect to the house at Daba Gardens, Visakhapatbnam, subsequent to the conclusion of the allotment and whether the petitioner owns a house or not by 1.5.1979 or latest by 6.6.1980 is a matter of verification of record. It is stated that the petitioner has not violated any conditions of allotment and that the affidavit executed by the petitioner on 29.12.1980 was in terms of proforma supplied by VUDA and that once either the allotment letter or the regular sale deed executed in favour of the petitioner making it a subject matter or a condition precedent, the petitioner is not bound by the affidavit. With these averments, the petitioner sought for setting aside of the impugned proceedings.

4. The respondent - VUDA has filed counter affidavit and admitted all the averments with regard to allotment of plot No.66 at Muvvalavanipalaem, Visakhapatnam. It is stated that the petitioner furnished a certificate duly obtained from Visakhapatnam Municipality on 25.8.1979 to the effect that he is possessing neither a house nor a

site in his name or in the name of his wife in Visakhapatnam Municipal Limits as per records and subsequently the petitioner submitted his willingness on 18.7.1980 to the effect that he is willing to take a plot. Vide letter dated 1.12.1980 the petitioner was called upon to attend the office to the lottery to be held on 9.12.1980 and after lottery he was informed that he was allotted plot bearing no.66/12 of M.V.P. layout and he was requested to pay the requisite amount. The petitioner has given an affidavit dated 27.12.1980 on a stamp paper worth of Rs.5/- to the effect that in urban agglomeration of Visakhapatnam, he does not own any vacant site/house and also mentioned that he has not entered into any agreement or any hire purchase agreement in respect of any vacant land or house in respect of any agglomeration either in his name or in the name of his wife and also declared therein that he does not own or possess any land or house under any irrevocable power of attorney or in any manner or method mentioned in Sec. 2(3) of the U.L.C. Regulation Act, 1976. In the said affidavit, the petitioner had agreed that any material omission or suppression of the fact even involuntarily made or inadvertently mentioned, entails not merely cancellation of any allotment made in his favour but also that he would be liable for penalties such as forfeiture of initial deposit liability for interest etc. for any proceedings being taken under the civil and criminal law of the land. As he paid full tentative cost, conditional sale deed in favour of the petitioner was executed on 27.12.1986. It is stated that one Sri K.Krupa Rao has applied for allotment of a plot on 25.4.1981 in the prescribed application form and duly paid an amount of Rs.500/- towards the deposit amount and as he paid the requisite amount, plot No.66 in sector 12 of M.V,. palem was allotted to him and a sale deed was executed in his favour on 30.6.1986. It is stated that the Estate Officer, VUDA has reported on 12-12-1986 that during his inspection it was learnt by him that the allottee of plot No.66 of Sector -12 of M.V.Palem own a house bearing D.No.31-30-34 in Saibaba Street of Venkateswara Metta, in the name of Sri P.Somesawra Rao with the assessment No.16929 as per the Municipal Revenue Section records. The petitioner was issued notice dated 18.12.1986 to the house address bearing D.No.31-30-34, Narayana Street, Daba Gardens, Visakhapatnam, which was received back undelivered with an endorsement that the addressee left without any instructions and the same notice was sent to the office address of the petitioner which was acknowledge by him on 14.3.1988, but no reply was received from him to the show cause notice why the allotment of the said plot made in his favour should not be cancelled for submission of wrong affidavit. The petitioner required the VUDA in his letter dated 20.04.1989

that work is going on in the above site by somebody and the same may be stopped. Sri A.Krupa Rao, the subsequent allottee was addressed letter dated 3.8.1989 to stop the construction work as it is under dispute. Accordingly the petitioner was issued with another notice dated 3.8.1989 on the same liens of the notice issued to him on 18.12.1986 and requested him to stop the construction work which was taken up by him for constructing a compound wall and the said notice was received on 7.8.1989. Sri P.Srinivasa Rao, S/o P.Someswara Rao has informed in his letter dated 10.8.1989 that his father was acting as Kartha of their Hindu undivided family which consisted of three major sons and minor son and he purchased the building bearing D.No.31-30-34 as Kartha of the Hindu Joint Family, subsequent to his application and declaration. The petitioner was requested by letter dated 23.9.1991 to furnish the original sale deed pertaining to the property for verification and return. The said letter was received on 27.9.1991. Another letter dated 22.11.1991 was addressed to furnish the document, but the same has not been furnished. Therefore, allotment of plot NO.66 of M.V.Palem was canceled vide proceedings dated 17.9.1993 and unilateral cancellation deed dated 25.9.1993 was executed and amount of Rs.8,709/- was returned by way of cheque and the same was also acknowledged.

5. The learned counsel appearing for the petitioner reiterating the writ averments contended that as on the date of calling for the applications by VUDA on 1.5.1979 for allotment of house sties or by 16.6.1980 the date on which communication was received by the petitioner informing that through resolution of VUDA, he was allotted a plot or at least by 31.7.1980, the date on which the proceedings with regard to allotment were concluded, the petitioner admittedly did not own any house and the house at Daba Gardens was purchased by the petitioner on 18.8.1980 i.e., after the allotment of the plot and that too this house was purchased by the petitioner as a Kartha of the Hindu undivided family and, therefore, there is no justification for VUDA to cancel the allotment and execute a unilateral cancellation deed. He submitted that the petitioner was working at Bombay and the VUDA has sent notices to his house at Visakhapatnam calling upon him to furnish the sale deed pertaining to his house at Dabagardens at Visakhapatnam and therefore he could not furnish the details. He stated that the very same plot was allotted to one A.Krupa Rao and

the same is illegal. He stated that many of the employees of VUDA own houses and even then they were allotted plots by VUDA and the petitioner was wantonly singled out for no fault of his and this is arbitrary and illegal. He reiterated that the petitioner does not own any house as on the date of allotment of the plot and as such the petitioner has not violated any conditions of allotment and therefore the impugned order of canceling the allotment is illegal and arbitrary.

6. On the other hand, the learned Standing Counsel for VUDA contended that the object of issuing notification calling for applications for allotment of house sites is to see that the persons who do not possess any house or site in Visakhapatnam Urban Agglomeration, is allotted a house site and, therefore, all the allottees were asked to furnish affidavit as per Section 2(3) of Urban Land Ceiling Regulations Act, 1976 stating that they does not own any vacant site/house. The petitioner has furnished an affidavit on 27.12.1980 on a stamp paper worth Rs.5/- stating that he does own any house/site and that he has also furnished an affidavit to that effect on 25.8.1979 and, therefore after complying with all the formalities, he was allotted the plot No 66 of sector 12 of Muvalavanipalem lay out and conditional sale deed was executed in his favour on 27.2.1986. But as per the report of the Estate Officer, VUDA dated 12.12.1986 the petitioner own a house bearing D.No.31-30-34 in Saibaba Street of Venkateswara Metta in his name. When he was issued with notice, his son and subsequently the petitioner replied that it was acquired subsequent to allotment. Though the petitioner was given notices to furnish the sale deed for verification and return, he did not furnish and, therefore, it was presumed that the information furnished by the petitioner that he acquired the house subsequent to the allotment, as false and accordingly as per rules, the allotment was cancelled and cancellation deed was also executed. Along with the counter affidavit, the respondent also enclosed list of relevant dates and also xerox copy of the sale deed pertaining to the house of the petitioner at Daba Gardens and stated that the petitioner purchased the house at Daba Gardens, Visakhapatam on 12.8.1980 under a registered sale deed and whereas on 22.12.1980 plot No.66/12 in M.V.P layout was allotted by the respondent and as per condition No.4, the petitioner has to submit an affidavit declaring that he does not own any house or site and on 30.12.1980 the petitioner gave an affidavit stating that he does not own any house at Visag and believing the version of the petitioner, conditional sale deed was executed on 10.12.1986. The

Estate Officer reported that on 12.12.1986 that the petitioner owns a house and accordingly a show cause notice was issued. Even the Assistant Commissioner, Visakhapatnam informed the respondent on 16.9.1989 that petitioner owns a house. To the show notice dated 2.6.1990 the petitioner replied that he acquired the house as Karta of Hindu Joint family subsequent to allotment of plot No.66. By notices dated 23.9.1991 and 22.11.1991, the petitioner was asked to produce original of sale deed, but as he did not comply with the same, respondent on 17.9.1993 cancelled the allotment of plot and on 25.9.1993 executed deed of cancellation. She stated that even before this court, the petitioner had made false statement that he purchased the house prior to the allotment of plot and as per the dates stated above and as per the copy of the sale deed produced along with counter, it is false and making false affidavits or statements for the purpose of admission of the writ or for obtaining interim orders, amounts to fraud. In support of this contention, she relied on the judgments reported in ***S T A T E v . SHINGARA SINGH*** and ***S.P.CHENGALVARAYA NAIDU v. JAGANNATH***.

7 . From the above rival pleadings and contentions, the only controversy around which the issue revolves is whether as on the date of allotment of the plot, whether the petitioner was already having house/site?

8. Prima facie the above questions, appears to be a disputed question of fact, which this court normally desist to decide under the writ jurisdiction. The case of the petitioner is that pursuant to the notification of VUDA on 1.5.1979 for allotment of plot, he paid the required amount and on 1.12.19980 the petitioner was informed that VUDA has decided to allot MIG I (middle Income Group I) and subsequently through proceedings of Vice Chairman, VUDA dated 22.12.1980 plot No.66 in sector 12 of Muvvalavanipalem layout was allotted to the petitioner subject to the payment of the tentative cost and the petitioner paid all the requisite amount and a regular sale deed was executed by VUDA in his favour on 27.2.1986. Subsequently, the petitioner was issued with a show notice dated 3.8.1989 calling upon him why the allotment made in his house shall be cancelled as he is already having a house bearing door No.31-30-25A in Dabagardens area of Visakhapatnam. As the petitioner was away at Bombay, his son replied stating that by the date of allotment

of plot, neither himself nor any other member in the family own any immovable property and that subsequently the petitioner purchased the house at Dabagardens as Karta of Joint family. From the material on record it could be seen that subsequently also, the VUDA had sent show cause notices to the petitioner and the petitioner replied them with the same explanation, as was offered by his son. The case of the petitioner is that the communications sent by VUDA on 23.9.1991 and 22.11.1991 could not complied with as he was away at Bombay on employment. On the other hand, the case of the VUDA is that as they reliably learnt, as per the averments referred to above, that the petitioner was already having house by the date of allotment of plot, they requested the petitioner to produce the original sale deed pertaining to his house at Dabgagardens to verify whether it was purchased prior to the date of allotment or subsequently and as the same was not complied with, the allotment was cancelled and cancellation deed was executed and amount was returned to the petitioner by way of cheque.

9. Further as per the material on record, the cancellation of the plot allotted in favour of the petitioner was made on 17.9.1993 and deed of cancellation was executed on 25.9.1993. But in the counter affidavit filed by the respondent at paragraph no.4 it is stated that *". . .Sri Krupa Rao has applied for allotment of a plot on 25-4-1981 in the prescribed application form duly paid an amount of Rs.500/- towards the deposit amount. He was allotted the plot bearing No.66 in Sector 12 of M.V.Palem layout at the rate of Rs.250/- per sq. yard with 289 Sq. yards vide proceedings P.No.295/HIG C4 dated 21-03-1986 and requested to pay an amount of Rs.71,810/- towards balance site cost and lease rent. He had paid full cost of the plot. Hence the sale deed was executed in faovur of him on 30-06-1986 vide Document NO.5451/86/."* This court fails to understand in the light of the above circumstances, that when the said plot which was allotted in favour of the petitioner was cancelled on 25.9.1993, how the same plot could be allotted to another allottee even prior to cancellation.

10. Coming to the aspect of notice, the case of the petitioner in the affidavit filed in support of the petition is that during the month of September, 1986 he was transferred to Bombay and, therefore, he could not respond to the notices issued by the VUD and thereby could not produce the original sale deed with regard to the

house purchased at Daba Gardens, Visakahpatnam. On the other hand, the case of VUDA is that before passing the impugned order canceling allotment of plot and also before executing deed of cancellation, the petitioner was issued with notices and the same were received by him on 27.9.1991 and as he failed to furnish details, the impugned order was passed. The petitioner has produced the copy of the notice dated 2-6-1990 addressed by VUDA. This notice is addressed to the petitioner to D.No.31-30-34, Narayana Street, Dabagardens, Visakhapatnam. Even the impugned orders dated 17.9.1993 and 2.10,.1993 were addressed to the petitioner to the above address. As noted above, the case of the petitioner is that he was transferred to Bombay office of M/s Hindustan Petrolium corporation Limited during the month of September, 1986. This is not denied in the counter. Earlier, when the initial show cause notices were issued on 3.8.1989, as the petitioner was not available, his son filed explanation stating that his father was working at Bombay and gave explanation on behalf of his father. Even to the subsequent show notice dated 2.6.1990, the petitioner filed replies from his Bombay office. Even in the counter affidavit also it is stated that when the notice dated 18.12.1986 pursuant to the report of the Estate Officer, was sent to the petitioner at D.No.31-30-34, Narayana Street, Daba Gardens, Visakhapatnam, it was returned unserved and subsequently it was again issued to the office address of the petitioner and it was acknowledged. Under these circumstances, before passing the impugned orders, in my considered view, the VUDA authorities ought to have issued notices to the petitioner to his Bombay office and called for explanation. By addressing show cause notices to the Visakhapatnam address of the petitioner, I am of the considered view, that principles of natural justice have not been substantially complied with in their true spirit and thereby, the petitioner could not file the required documents for verification.

11. Further at the cost of the repetition it is to be seen that pursuant to the notification calling for applications for allotment of house sites on 1.5.1979, the petitioner paid the requisite amount and ultimately the land was also registered in favour of the petitioner on 27.2.1986. Of course, the authorities also registered very same land in favour of another individual. The allotment was cancelled only on the ground that the petitioner possessed another house by the time of allotment of house. To counter

this allegation, in the light of the above facts and circumstances, I am of the view that the petitioner shall be given an opportunity, since his valuable rights are being affected.

12. For the foregoing reasons and in the interest of justice, I pass the order as under:

“Impugned orders are set aside and the petitioner is given four weeks time from today to furnish the necessary documents required by VUDA for verification and thereafter, the VUDA shall pass appropriate orders in a pragmatic view, after giving notice even to the subsequent allottee.”

13. The writ petition is accordingly allowed. No costs.

AVS ----------

23--03--2006